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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re VALERIE R. et al., Persons Coming  
Under the Juvenile Court Law.

B221789

(Los Angeles County  
Super. Ct. No. CK69702)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JULIE L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Margaret S. Henry, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

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Julie L., mother of Valerie R., Jonathan R., Jr., and Crystal R., appeals from orders of the juvenile court denying her Welfare and Institutions section 388<sup>1</sup> petition to reinstate her family reunification services and terminating her parental rights (§ 366.26). We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Julie L. came to the attention of the Los Angeles County Department of Children and Family Services (Department) on August 25, 2007 after she and newborn Crystal tested positive for methamphetamine. A month before Crystal's birth, Julie L. had fled the family home with her two older children, Valerie, aged two, and Jonathan, aged one, seeking refuge from her abusive boyfriend, Jonathan R., Sr.,<sup>2</sup> in a battered women's shelter. The Department detained the children and filed a section 300 petition on August 29, 2007 alleging all three children were at risk due to domestic violence and Julie L.'s drug use (§ 300, subds. (a) & (b)).<sup>3</sup>

On September 26, 2007 the juvenile court held a combined jurisdiction/disposition hearing and sustained the amended petition, finding the children were at risk due to domestic violence between the parents and Julie L.'s drug use. Julie L. was provided with family reunification services and ordered to participate in a drug rehabilitation program with random drug testing, parent education, domestic violence counseling and individual counseling. The court also ordered monitored visitation at least three times a week.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Jonathan R., Sr., admitted paternity of the older children and requested a blood test to determine whether he was Crystal's father. After receiving the test results, he admitted paternity of Crystal. The court determined he was a presumed father of the children and ordered family reunification services for him. Although his parental rights were terminated at the same time as Julie L.'s, he is not a party to this appeal.

<sup>3</sup> The family had been the subject of four previous, unsubstantiated Department referrals arising from alleged drug use, domestic violence between the parents and a cockroach infestation. Julie L. also accused Jonathan R., Sr., of sexually abusing Valerie. The court ordered a sexual abuse examination, but the examination was inconclusive.

A six-month review hearing (§ 366.21, subd. (e)) was held on April 22, 2008 (continued from March 26, 2008). As of that date, Julie L. had started and stopped a drug rehabilitation program, enrolled in a second program, as well as associated parenting classes, and had consistently tested negative for drug use (with only two no-shows). With respect to visitation, the Department reported she had visited the children on a weekly basis. Although the Department had reported some concerns about those visits—in particular, Julie L. focused on Valerie and largely ignored the two younger children—she regularly appeared for the visits except when she had transportation problems.<sup>4</sup> The court granted six additional months of reunification services and scheduled the 12-month review hearing (§ 366.21, subd. (f)) for October 21, 2008.

In the report prepared for the 12-month review hearing, the Department advised the court Julie L. had failed to complete her drug abuse and domestic violence classes because of her need to complete community service hours imposed as a penalty for unspecified violations. In addition, although she had tested negative on 11 occasions, she had been a no-show for three drug tests. Most troubling, her visitation with the children was inconsistent, and the Department had initiated an adoption assessment for the paternal grandmother. Notwithstanding the Department's concerns, the report recommended services be continued for Julie L.

Because the Department had erroneously noticed the hearing for October 31, 2008, the court continued the hearing to that date and directed the Department to file a supplemental report. Although there was no change in the facts contained in the report with respect to Julie L., the Department reversed its position and recommended family reunification services be terminated. Julie L. did not appear at the hearing and failed to contact her counsel. However, based on the stated concerns of Julie L.'s and the children's counsel about the change in recommendation between the two reports, the court continued the hearing and ordered the Department to explain the shift in its

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<sup>4</sup> There is no explanation in the record why Julie L. visited the children only once per week rather than three times each week as initially ordered by the court.

recommendation. The Department was also directed to address the suitability of placing the children with their paternal grandmother.

The hearing was reconvened on November 6, 2008. The Department's further report explained it had recommended termination of family reunification services for Julie L. based on her failure to complete or reenroll in a drug program and her "sporadic and limited" visitation with the children. Moreover, the report noted, Julie L. rarely assumed a parental role with the younger children. Social worker Rosie Pugh appeared at the hearing; Julie L. did not, nor did she contact her attorney with an excuse for her absence. Her attorney requested an additional six months of services based on her negative drug testing and attributed her inability to finish the required classes and find adequate housing to her lack of financial support. The children's counsel supported the request. The Department's lawyer concurred that Julie L.'s financial condition was likely a cause of some of her failures but pointed out she had more or less "dropped out." "[Julie L.] only visits once a month. These are little kids, and once a month is very difficult for the children. It doesn't seem . . . there is a substantial probability of return. [She's] got a lot of issues . . . [and] has to solve her own problems before she can really think seriously about reuniting with the child[ren]." The Department recommended services be terminated and the case set for a selection and implementation hearing under section 366.26.

The court concurred, noting Julie L. seemed to be "going backwards" and had failed to attend either of the scheduled 12-month review hearings. The court identified its chief concern as her lack of visitation: "Once a month doesn't cut it." The court terminated reunification services for both parents and scheduled the case for a section 366.26 hearing.

In December 2008 the children, who had been in foster care since their initial detention, were moved to the home of their paternal grandmother, who had agreed to adopt them. In its report for the section 366.26 hearing scheduled for March 5, 2009, the Department stated the children were in a safe, stable and loving home environment and neither Julie L. nor Jonathan R., Sr., had shown any interest in reunification. According

to the Department, “The parent[s’] visits with the children are rare, short, and sporadic.” Because the adoption home study had not yet been completed, the Department recommended the hearing be continued for 90 days.

Julie L. appeared at the March 5, 2009 hearing. Her counsel reported she had enrolled in another drug program and was visiting with the children three times a week. He requested funding for further drug testing so she could demonstrate her sobriety and advised the court he was contemplating the filing of a section 388 petition. The court directed the Department to inquire about funds for drug testing and continued the section 366.26 hearing until June 4, 2009.

In the interim, the court held a previously scheduled review hearing on May 7, 2009. Julie L. appeared, and her counsel informed the court she had completed her associate of arts degree in criminal justice and had passed the Sheriff’s Department entrance examination. The Department had reported, however, that Julie L. had tested positive for methamphetamine on two occasions—once the previous month—and had admitted use of the drug on another occasion.<sup>5</sup> In addition, the Department reported Julie L.’s visits with the children had been inconsistent and brief. On the other hand, the Department described the children’s transition into their paternal grandmother’s home as “amazing.”

The situation remained unchanged by the time of the June 4, 2009 selection and implementation hearing. The Department requested an additional continuance to allow completion of the adoption home study. In its next report the Department described the children as thriving in the home of their paternal grandmother. Although Julie L. had completed her drug program and had located an apartment, she had visited the children on six occasions only, each visit lasting an hour or less. The Department recommended termination of Julie L.’s parental rights. Julie L. complained visitation had been difficult

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<sup>5</sup> Julie L. tested positive for methamphetamine on February 10, 2009 and April 12, 2009 and admitted methamphetamine use on December 10, 2008.

because of conflict with the paternal grandmother. At Julie L.'s request, the court set the matter for a contested hearing on December 3, 2009.

On November 23, 2009 Julie L. filed a section 388 petition for modification, seeking an additional six months of reunification services and unmonitored visitation. The court set a hearing on the section 388 petition for the same day as the pending section 366.26 hearing. The hearing was subsequently continued several times at the Department's request and was finally held on January 14, 2010.

In the reports submitted into evidence at the January 14, 2010 hearing, the Department described a series of problems involving Julie L.'s interaction with the children. Episodes included a visit in which Julie L. appeared disoriented and, after being prevented from riding with Jonathan sitting on the handlebars of a bicycle, fell off the bicycle; a visit in which Julie L. pursued Jonathan R., Sr., and his girlfriend, pushed him and yelled at him; and a visit in which she chastised Jonathan for calling her by her name rather than calling her "mommy." The Department also reported she continued to favor Valerie and to ignore the younger children.

In testimony at the combined sections 388/366.26 hearing, Julie L. misrepresented the results of her drug testing (accusing the drug center of misstating the results), claimed she visited the children for an hour three times weekly and denied favoring Valerie over the other children. When confronted about inaccuracies in her account, Julie L. blamed the social worker and her attorneys. Under questioning, she also acknowledged she was not yet ready to have the children placed with her and would rather have unmonitored overnight visits at first.

In ruling on the section 388 petition, the court observed there had been some change of circumstances in that Julie L. had finished her drug program but "she hasn't made enough progress to go to unmonitored visits. The quality of the visits . . . has not been good, and . . . it does not appear that mother is capable of taking care of the children even long enough for an unmonitored visit[], never mind having the children returned, which is what somebody should be asking for when we are at this stage." The court

denied the section 388 petition and, turning to the trailing section 366.26 hearing, terminated Julie L.'s parental rights.

## DISCUSSION

### 1. *The Juvenile Court Did Not Abuse Its Discretion in Denying the Section 388 Petition*

Section 388 provides for modification of prior juvenile court orders when the moving party presents new evidence or a change of circumstances and demonstrates modification of the previous order is in the child's best interests.<sup>6</sup> (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446; see Cal. Rules of Court, rule 5.570(e).)

"A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) Moreover, even if a parent is able to demonstrate a genuine change of circumstances, the parent must also "show that the undoing of the prior order would be in the best interests of the child." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interest of the child." (*In re*

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<sup>6</sup> Section 388 provides a parent or other interested party "may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . [¶] . . . [¶] If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ."

*Stephanie M.*, *supra*, 7 Cal.4th at p. 317; see *In re Casey D.*, at p. 47 [““[c]hildhood does not wait for the parent to become adequate””].)

Ordinarily, the juvenile court’s decision concerning a section 388 petition is reviewed for an abuse of discretion. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) We may disturb the juvenile court’s exercise of that discretion only in the rare case when the court has made an arbitrary, capricious or “patently absurd” determination. (*Id.* at p. 318.) We do not inquire whether substantial evidence would have supported a different order, nor do we reweigh the evidence and substitute our judgment for that of the juvenile court. (*Id.* at pp. 318-319.)

The juvenile court here did not abuse its discretion in denying Julie L.’s section 388 petition. The court held an evidentiary hearing and fully considered Julie L.’s evidence of changed circumstances. The court recognized completion of her drug program represented a modest improvement. But other evidence significantly outweighed this positive showing. Julie L. claimed to be tightly bonded with her children and to be visiting them three times weekly for an hour each visit. The Department’s reports proved otherwise and demonstrated serious shortcomings during the visits that actually occurred. Julie L.’s assertion of recovery from drug abuse was severely impeached by her positive tests for methamphetamine (and one admission of use) during the winter and spring of 2009, tests results she denied under penalty of perjury when questioned by the court. Faced with these inconsistencies and contradictions, Julie L. failed to admit her errors and instead blamed the drug testing facility, the social worker and her lawyers.

Even if the evidence documented some change in circumstances in Julie L.’s recovery, she provided little, if any, evidence that granting the petition would be in her children’s best interests. Julie L. offered nothing more than the bald assertion the children would benefit from a caregiver younger than their paternal grandmother. Such speculation does not substitute for evidence. Julie L. admitted she was not ready for the children to be returned to her. She requested further services and unmonitored visitation simply to allow additional time to ready herself to be a parent. That stage of the



proceeding was over. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 [“[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement”]; accord, *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) The court found her failure to demonstrate a mature, parental role with the children warranted denial of her request for unmonitored visitation and fell far short of the evidence required to order resumption of reunification services with a concurrent delay in the children’s permanency planning. Instead, the children’s best interests lay in pursuing adoption by the paternal grandmother under whose care the children had thrived.

*2. Having Failed To Obtain Reversal of the Section 388 Ruling, Julie L.’s Challenge to Termination of Her Parental Rights Also Fails*

Julie L.’s challenge to the juvenile court’s ruling terminating her parental rights under section 366.26 is limited to the proposition the court’s ruling was in error because the court abused its discretion in denying her section 388 petition. Having found no error by the juvenile court in denying that petition, we likewise affirm the juvenile court’s order terminating Julie L.’s parental rights.

**DISPOSITION**

The orders of the juvenile court are affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.